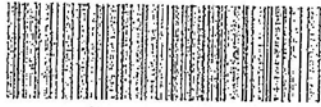




THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 560-6279



1195266114013C01359

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034983526A et al. (6 NOV's)
Hearing Date: July 19, 2013

To COHEN HOCHMAN & ALLEN
80 MAIDEN LANE
SUITE 507
NEW YORK, NY 10038

City of New York v. HOWARD WONG

Total Civil Penalty: \$30,000.00

6. Notices of Violation (NOV's) were issued to the Respondent on the record before me, and upon the further findings of fact and conclusions of law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 034983526A		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B160		
CHARGE: AC 28-105.1	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		
NOV: 034983528J		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B165		
CHARGE: ZR 32-63	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		
NOV: 034983530Z		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B162		
CHARGE: AC 28-502.6	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		
NOV: 034983532M		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B162		
CHARGE: AC 28-502.6	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		
NOV: 034983534N		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B162		
CHARGE: AC 28-502.6	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		
NOV: 034983535H		
PLACE OF OCCURRENCE: 209 DYCKMAN STREET MANHATTAN		
DATE OF OCCURRENCE: 06/25/2012		
ISSUING OFFICER AGENCY: 1983 DOB		
ECB CODE: B163		
CHARGE: AC 28-301.1	CIVIL PENALTY IMPOSED:	\$5,000.00
DISPOSITION: IN VIOLATION		

FURTHER FINDINGS OF FACT CONCLUSIONS OF LAW.

NOV: 034983526A AC 28-105.1 NOV: 034983528J ZR 32-63 NOV: 034983530Z AC 28-502.6 NOV:
New York City Environmental Control Board

1195266114013C01359

03498353241 AC 28-502.6 NOV: 03498353241 AC 28-502.6 NOV: 03498353241 AC 28-502.6
 Lindsay Cartmway, Esq. appeared with Howard Wong, the named respondent. Alex Berger appeared on behalf of the petitioner. Joe Cusiano observed.

All testimony and evidence submitted by all parties in ECF#11992643 is incorporated into this hearing. That hearing was held on the property at 267 Dyckman issued on 6-25-12. This property is 299 Dyckman also issued on 6-25-12. The parties are the same.

The process server did not appear. All parties agreed to go forward without the presence of the process server.

The petitioner submitted a photo of the sign. Exits (See, petitioner's exhibit#1).

Mr. Wong testified that the service was made to his home. He lives there with his wife and never has house guests. The process server described John Doe on the affidavit of service as 130-160lbs and over 65 years old. He was 59 and not as thin as described. He denied ever speaking to the process server. He received the Notice attached to the door.

Additionally, he testified that Jantun Realty is the owner of the property and he is president of the organization. He does the paperwork in the office. His brother, Vincent is vice president and on-site manager dealing with all issues at the building. He had no knowledge of the sign until he received the Notice of Violation (NOV). The respondent submitted a deed to the property showing Jantun as the owner of the property (See, respondent's exhibit A).

A lease agreement was submitted between the registered OAC Splash Media and Vincent Wong (See, Respondent's exhibit A#1). Also submitted previously is a Chapter 11 motion against OTR Media Group, Inc. which includes this property (See, respondent's exhibit B). The respondent argues it is disingenuous for the city not to allow the Rule 49 exemption with Splash who works with OTR Media and also hold OTR Media responsible for these properties.

The petitioner noted that Splash and OTR Media were once working together. At the time of the issuance of these NOVs, Splash was not a registered OAC.

Mr. Cartmway argued that the respondent was improperly personally named since Jantun Realty is the owner (See, respondent's exhibit C-memo and petitioner's 5/3-response memo).

Further, she submitted documents to show Peter Merk removed the sign. OTR engaged Mr. Merk to install the signs and under the CBS case the property owner should not be responsible even though Mr. Merk was not a professional licensed sign hanger (See, respondent's exhibit B).

New issues presented at this hearing are the denial of legal non-conforming use. The respondent supplies a packet of documents to show that it establishes legal creation and continuity with no more of a gap within two years (See, respondent's exhibit C#1).

The petitioner noted there was nothing to oppose legal creation. However, he presented documentation to show a different type of signage from one long pointed sign to smaller panel signs within the two year period (See, petitioner's exhibits 2-3#1).

Evidence that the sign was timely removed on 8-4-12 was submitted (See, respondent's exhibits H#1).

Additionally, with respect to the failure to maintain, the respondent argues that this is an improper charge for an outdoor advertising sign. It is not immediately hazardous and does not rise to the level of a class#1 (argued in ECF#11992643 - later incorporated as per consent of parties). The petitioner notes it is the exact scenario where a failure to maintain should be imposed. The sign, as shown in the photo, is falling down and immediately hazardous.

The process server described John Doe as male, yellow-skinned, 5'8", 65 years and 130-160lbs, prior to attaching the NOV which was received by the respondent. I credit the affidavit of service and find the respondent fails to credibly show the person described was not the respondent or someone at the home at the time. Accordingly, the respondent's motion to dismiss for defective service is denied.

I find the respondent was properly named. The respondent is the president of the company which owns and manages the property. Mr. Howard Wong may predominantly do bills, etc. for the property but I do not credit the testimony that he is not aware of the signs. Further, as president of the company, he has control of the property.

With respect to the H cases, the respondent fails to show the respondent was improperly named. The evidence presented failed to show a licensed sign hanger installed the sign and attached the deed. The H sections references licensed sign hangers, not just any sign hanger. I do not find under the CBS case that the rebuttal evidence supplied is sufficient to show another party should have been named. The fact the respondent is a property owner and not the media company is not dispositive. Additionally, it is unclear whether Mr. Merk installed or just removed the signs.

Board of Appeals decisions make it clear that when a property owner leases space for the purpose of placing a sign on the outside of the building available for advertising purposes, they become an outdoor advertising company as defined in Code Section 28-502.1. See, NYC v. Callen, ECF Appeal #0001671, 8/18/09; NYC v. Mann v., ECF Appeal #0900123, 8/20/09. Therefore, the respondent as property owner is an OAC and responsible for the violations issued to them as well as the OAC media company.

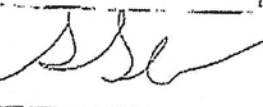
Further, I find the Splash media was not a registered OAC. Where I have found OAC's with OTR in the name establishes the Rule 49 exemption. I do not find that Splash media and OTR Media are the same company. Splash had a registration number which was different than OTR Media. Splash Media failed to renew the registration. The property owner as an OAC is required to have a lease with a registered OAC to be exempt from the registration. Therefore, I find the Rule 49 exemption is not applicable.

Further, I find that legal creation has been shown but I credit the petitioner's documents to show there was a lapse of continuity thereby New York City Environmental Control Board

defeating the defense of non-conforming use.

The photo of the sign, Petitioner's exhibit 7 shows it is falling down. Since it is a large sign I find that the failure to maintain is hazardous and should have been immediately repaired.

Accordingly, I find the respondent in violation of all charges. I credit the evidence of timely removal and impose a Board approved mitigated penalty to all KOV's.

TOTAL CIVIL PENALTY: \$30,000.00	
	JUL 30 2013
Printed Name: Stacy Selden	Date: 07-26-2013
Stacy Selden, Administrative Law Judge	Date

PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER - PROTECT YOUR RIGHTS

EXHIBIT 3

NYCServ Violation Copy

Internet



35027177N



NOTICE OF VIOLATION AND HEARING



COMMISSIONER OF THE DEPARTMENT OF BUILDINGS
OF THE CITY OF NEW YORK, PETITIONER, AGAINST

Violation No. 35027177N
ENVIRONMENTAL CONTROL BOARD

Respondent	First name (or entity name)	Last name	City	State	Zip code
	Jan Jan Realty Corp.		Brooklyn	NY	11229
Address	Number and street				
	2292 E 15 th Street				
Additional mailing to be sent (agent, zero if, other):	License No. (if Applicable)	Construction Activity			
Name	First name	Last name	Company		
Mailing address	Number and street	City	State	Zip code	

Commissioner's Order To Correct Violations:

Place of occurrence	209 Duckman Street	Block	6	Lot	17	Section	13	Sub-section	RS	Sheet	15
Construction type	CH4	No. of stories	6	Lot	17	Section	13	Sub-section	RS	Sheet	15
Violation type	1004898	No. of stories	6	Lot	17	Section	13	Sub-section	RS	Sheet	15
Occupancy at time of inspection	1251404										

Based on an inspection of the premises and/or records of the Department, the undersigned has determined that you are in violation of the section of Law cited below, or Title 27 or Title 28 of the NYC Administrative Code, the NYC Construction Code, the NYC Electrical Code, the NYC Zoning Resolution, the Reference Regulations under Titles 1 or 2 of the Rules of the City of New York.

Violating Conditions Observed	Stop Work Order	Class 1	Class 2	Class 3	Recurring Condition
1162 28-50a.6	<input checked="" type="checkbox"/> Full	<input checked="" type="checkbox"/> Class 1	<input type="checkbox"/> Class 2	<input type="checkbox"/> Class 3	<input type="checkbox"/> Recurring Condition
Property owner acting as outdoor Advertising Company failure to obtain DEC registration number while engaging in the outdoor advertising business.					
(Medicaid Managed Care)					
Remedy: Remove illegal sign/register					
<input type="checkbox"/> ILLEGAL CONVERSION - CLASS 1: For 20-202.1 & 19CNY 102-01, additional daily penalties for continued violation of 20-210.1 also applicable. <input type="checkbox"/> For 20-202.1 & 19CNY 102-01, additional "Class 1" daily or "Class 2" monthly penalty also applicable.					
The Commissioner orders that you timely correct these conditions and file a certificate of such correction. Uncorrected violations are subject to additional violations and penalties. IMPORTANT: See "Certifying Correction" on reverse.					

Important Information: As detailed in 20-201.4 and Section 102-01 of Subchapter B of Title 1 of the Rules of the City of New York, violations may be subject to aggregated penalties of the first order, which shall be imposed in accordance with the ECR Buildings Penalty Schedule.

CURE DATE	1 / 1	Resolution options
HEARING DATE	9 / 13 / 13	at 8:30 AM <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 1:30 PM
If a date appears in the box above, you may have the option to admit the violation and certify correction by the "cure date." By doing so, you avoid a hearing before the Environmental Control Board and any penalties which would be assessed at the hearing. Note: Depending on the violation, additional DOB civil penalties (separate from ECR penalties) may apply before a cure can be granted. For more information regarding "cures", see reverse side of the respondent copy of this Notice of Violation.		
For more information, to reschedule your hearing or inquire about the cure date, call the Environmental Control Board at the numbers listed above. For information on certifying correction of this violation, read instructions on the Certificate of Correction form, call Department of Buildings at 311, or visit the ECR Violation section at www.nyc.gov/buildings .		

Issuing officer's last name, first initial (print)
Singer R
117133
Unit Code

I personally observed the violation(s) charged and/or verified their existence through review of departmental records.
Issuing officer's signature
This statement is affirmed under penalty of perjury.

35027177N
ECR-PC (Rev. 2/12)

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NYCServ Violation Copy

Internet



35027178P



NOTICE OF VIOLATION AND HEARING

AGGRAVATED I

COMMISSIONER OF THE DEPARTMENT OF BUILDINGS
OF THE CITY OF NEW YORK, PETITIONER, AGAINSTViolation No. 35027178P
ENVIRONMENTAL CONTROL BOARD

Respondent First name (or entity name) OTR Media & Inc.		Last name	
Mailing address (Check if same address as place of occurrence) Number and street 1064 89th St		City NEW YORK	State NY
Additional mailing to be sent (agent, corp. or other):		License No. (if applicable)	Construction Activity
Name First name Shiger	Last name R	Company	
Mailing address Number and street	City	State	Zip code

Commissioner's Order To Correct Violations

Place of occurrence 209 Dyckman Street	Block 1064	Lot 89	Class of violation G 17 13 36	Dist. ST	Code RS	No. 14
Construction type C4-4	Use 1064	Floor 2233	Occupancy at time of inspection 58	Date of violation 1/15/04		

Based on an inspection of the premises and/or records of the Department, the undersigned has determined that you are in violation of the section of law cited below, of Title 27 or Title 28 of the NYC Administrative Code, the NYC Construction Code, the NYC Electrical Code, the NYC Zoning Resolution, the Rules and Regulations of the City of New York, or the Rules of the City of New York.

Violating Conditions Observed

Intention Code B165	Provision of Law 32-63	Violating Conditions Observed Outdoor Advertising Company. Sign prohibited in C4-4 district. (Medicaid Managed Care)
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Remedy: **Remove illegal sign**

<input type="checkbox"/> ILLEGAL CONVERSION - CLASS 1, Per 25-252.1 & 18CNY 102-01, additional daily penalties for continued violation of 25-252.1 also applicable.	<input type="checkbox"/> Aggravated if Condition per 18CNY 102-01(7).
<input type="checkbox"/> Per 25-252.1 & 18CNY 102-01, additional "Class 1" daily or "Class 2" monthly penalty also applicable.	

The Commissioner orders that you timely correct these conditions and file a certificate of such correction. Uncorrected violations are subject to additional violations and penalties. IMPORTANT: See "Certifying Correction" on reverse.

Important Information: As revised in 1984-2014 and Section 102-01 of Subchapter B of Title 27 of the Rules of the City of New York, measures may be subject to aggravated penalties of the first order, which shall be imposed in accordance with the EOB Building Penalty Schedule.

Resolution options

CURE DATE 1/13/13	HEARING DATE 9/13/13 at 8:30 AM <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 1:30 PM
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If a date appears in the box above, you may have the option to admit the violation and certify correction by the "cure date." By doing so, you avoid a hearing before the Environmental Control Board and any penalties which would be assessed at the hearing. Note: Depending on the violation, additional DCB civil penalties (separate from ECB penalties) may apply before a cure can be granted. For more information regarding "cures," see reverse side of the respondent copy of this Notice of Violation.

Environmental Control Board hearing locations:

- Queens: (718) 260-7200 - 144-00 66th Avenue, 1st fl.
- Manhattan: (212) 261-1400 - 85 John Street, 10th fl.
- Brooklyn: (718) 852-6100 - 9 Bond Street, 7th fl.
- Bronx: (718) 950-6110 - 3050 3rd Ave., 2nd fl.
- Staten Island: (718) 816-6305 - 350 St. Marks Place, 1st fl.

Proceedings will be held under the authority of the NYC Charter section 24-04 and the rules promulgated thereunder. This hearing is your opportunity to answer and defend against the allegations set forth above. Failure to appear, unless you admit the violation or an appearance is not required through availability of a Cure or Stipulation (see reverse) will result in a default and imposition of maximum penalties.

For more information, to reschedule your hearing or inquire about the case status, call the Environmental Control Board at the numbers listed above. For information on certifying correction of this violation, read instructions on the Certificate of Correction form, call Department of Buildings at 311, or visit the DCB Violation section at www.nyc.gov/dcb.

Issuing officer's last name, first initial (print) Shiger R	I personally observed the violation(s) charged and/or verified their existence through review of departmental records.
Signature number 117331	Issuing officer's signature Ron Shiger
Unit Code 315	This statement is affirmed under penalty of perjury.

35027178P

ECB-NO (Rev. 2/12)

ORIGINAL - ECB COPY

NYCServ Violation Copy

Internet



NOTICE OF VIOLATION AND HEARING



COMMISSIONER OF THE DEPARTMENT OF BUILDINGS
OF THE CITY OF NEW YORK, PETITIONER, AGAINST

Violation No. 35027176L
ENVIRONMENTAL CONTROL BOARD

Respondent		First name (or entity name)		Last name	
Jan Jan Realty Corp.					
<input type="checkbox"/> Mailing address (Check if same address as place of occurrence)		Number and street		City	State
2292 E 15 th street		Brooklyn		NY	11229
Additional mailing to be sent (agent, care of, other):		License No. (if applicable)		Construction Activity	
Name		First name	Last name	Company	
Mailing address		Number and street	City	State	Zip code

Commissioner's Order To Correct Violations

Place of occurrence	Block	Date of violation	Type	Dist.	Code	No.
209 Dyckman Street	1064	6/17/13	SC	STF	RS	16
Construction type	BN	No. of stories	Block	Occupancy at time of inspection	Date of violation	
C4-4	1064	9	2235	58	135-1909	

Based on an inspection of the premises and/or records of the Department, the undersigned has determined that you are in violation of the section of law cited below, of Title 27 or Title 28 of the NYC Administrative Code, the NYC Construction Code, the NYC Zoning Code, the NYC Zoning Resolution, the Reference Districts and/or Title 1 or 2 of the Rules of the City of New York.

Violating Conditions Observed		Stop Work Order	Class 1	Class 2	Class 3	Recurring Condition
Infraction Code	Penalty of Law	<input type="checkbox"/> Full <input type="checkbox"/> Partial	<input checked="" type="checkbox"/> Class 1	<input type="checkbox"/> Class 2	<input type="checkbox"/> Class 3	<input type="checkbox"/> Recurring Condition
565	32-63	Outdoor Advertising Company sign prohibited in C4-4 district.				
(Medicaid Managed Care)						

Remedy: Remove illegal sign

<input type="checkbox"/> ILLEGAL CONVERSION - CLASS 1, Per DC-202.1 & 11CHNY 102-01, additional daily penalties for continued violation of 20-210.1 who is applicable.	<input type="checkbox"/> Aggravated if Condition per 11CHNY 102-01(1)
The Commissioner orders that you timely correct these conditions and file a certificate of such correction. Uncorrected violations are subject to additional violations and penalties. IMPORTANT: See "Certifying Correction" on reverse.	

Important Information: As detailed in DC-202.1 and Section 102-01 of Subchapter B of Title 1 of the Rules of the City of New York, violations may be subject to aggregated penalties at the time of order, which shall be imposed in accordance with the ECR Buildings Penalty Schedule.

Resolution options	
CURE DATE	HEARING DATE
9/13/13	9/13/13 at 8:30 AM <input checked="" type="checkbox"/> 10:30 AM <input type="checkbox"/> 1:30 PM <input type="checkbox"/>
<p>If a date appears in the box above, you may have the option to admit the violation and certify correction by the "cure date." By doing so, you avoid a hearing before the Environmental Control Board and any penalties which would be assessed at the hearing. Note: Depending on the violation, additional DCB civil penalties (separate from ECRB penalties) may apply before a corp can be granted. For more information regarding "cure", see reverse side of the respondent copy of this Notice of Violation.</p> <p>For more information to reschedule your hearing or inquire about the cure date, call the Environmental Control Board at the numbers listed above. For information on certifying correction of this violation, read instructions on the Certificate of Correction form, call Department of Buildings at 311, or visit the ECRB Violation section at www.dob.nyc.gov/buildings.</p> <p>Environment Control Board hearing locations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Queens: (718) 230-7300 - 144-05 54th Avenue, 1st fl. <input checked="" type="checkbox"/> Manhattan: (212) 241-1400 - 60 John Street, 10th fl. <input type="checkbox"/> Brooklyn: (718) 623-6100 - 9 Bond Street, 7th fl. <input type="checkbox"/> Bronx: (718) 693-6110 - 3033 3rd Ave., 2nd fl. <input type="checkbox"/> Staten Island: (718) 615-8265 - 350 St. Marks Place, 1st fl. <p>Proceedings will be held under the authority of the NYC Charter section 104-b and the rules promulgated thereunder. This hearing is your opportunity to answer and defend against the allegations set forth above. Failure to appear, unless you admit the violation or an appearance is not required through availability of a Cure or Suspension (see reverse) will result in a default and imposition of maximum penalties.</p>	

Issuing officer's last name, first initial (print)
Singer, R
11713131 SE
Badge number Unit Code

I personally observed the violation(s) charged and/or verified their existence through review of departmental records.
Issuing officer's signature
This statement is affirmed under penalty of perjury.

35027176L

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ECB-PC (Rev. 5/12)